STATE OF MICHIGAN

COURT OF APPEALS

VALERIE OEHMKE, a/k/a VALERIE LANTZ,

Plaintiff/Counter-Defendant/Appellant,

v

RICHARD E. OEHMKE,

Defendant/Counter-Plaintiff/Appellee.

UNPUBLISHED
June 9, 2000

No. 216548
Houghton Circuit Court
LC No. 98-010460 DO

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce entered on October 8, 1998 in the Houghton Circuit Court. We affirm.

Plaintiff and defendant were married on July 5, 1997. After only eight months of marriage, the parties separated. On April 21, 1998, plaintiff filed a complaint against defendant for divorce. A judgment of divorce was entered on October 8, 1998. Under the terms of the judgment of divorce, plaintiff was required to pay defendant the sum of $20,000. This amount was to be secured by a mortgage on plaintiff's farm which she had owned free and clear before the marriage.

Plaintiff first argues that the trial court erred in determining that all sums expended by defendant during the eight-month marriage were his sole and separate property and that he was entitled to reimbursement for those expenditures. When dividing property in a divorce proceeding, the trial court's first consideration is to determine which assets constitute marital assets and which constitute separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). "Marital property," which is subject to apportionment, is property that has come to either party by reason of the marriage and comprises the marital estate. *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). "Separate property" is defined as "property owned by [a] married person in his or her own right during marriage." Black's Law Dictionary (Revised 4th ed), p 530. Generally, only marital property is divided between the parties, with each party taking away from the marriage that party's own separate estate with no invasion by the other party. *Reeves*, *supra* at 494.

Here, the court determined that because this marriage was of short duration, none of the assets that each party brought into the marriage had blended sufficiently to become marital assets. Though this determination is somewhat questionable, we will not disturb it absent an abuse of discretion. In any event, in light of this ruling, the assets each party brought into the marriage were found to be separate property. The court determined that defendant brought $39,000 of cash into the marriage and plaintiff brought her farm into the marriage. At the time of the marriage, plaintiff's farm had a net value of $116,946. The court also found that of the $39,000 that defendant brought into the marriage, he spent $8,400 to pay off plaintiff's debts, $16,700 to pay for plaintiff's farm expenses, and $14,000 to pay for the parties' living expenses. The court ordered plaintiff to pay defendant the sum of $20,000 over an eight-month period with the debt being secured by a mortgage on plaintiff's farm, reasoning that because defendant was essentially a "cash cow" for plaintiff and spent the entire $39,000 that he brought into the marriage, he was entitled to some reimbursement. Therefore, contrary to plaintiff's claim on appeal, the court never held that all sums expended by defendant during the marriage were his sole and separate property and that he was entitled to reimbursement for those expenditures. Instead, the court properly decided which assets were separate assets and which assets were marital assets by determining what each party brought into the marriage and by determining what had occurred to those assets during the marriage. *Reeves*, *supra* at 494.

Plaintiff also contends that after determining that assets brought into the marriage were separate assets, the trial court erred by awarding a $20,000 portion of plaintiff's separate asset (i.e., a portion of her farm) to defendant. As discussed above, in a divorce action, the trial court's first consideration when dividing property is to determine which property constitutes marital property and which constitutes separate property. *Reeves*, *supra* at 493-494. This distinction is important because "[g]enerally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party. However, a spouse's separate estate can be opened for redistribution when one of two statutorily created exceptions is met." *Id.* at 494.

The first exception to the doctrine of noninvasion of separate estates is contained in MCL 552.23; MSA 25.103. *Id.* Invasion of the separate estate is permitted by this statute if "the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party[.]" *Id.*, quoting MCL 552.23(1); MSA 25.103(1). This means that invasion is allowed when additional need is demonstrated by one of the parties. *Id.* The second exception "is available only when the other spouse 'contributed to the acquisition, improvement, or accumulation of the property.' MCL 552.401; MSA 25.136. When one significantly assists in the acquisition or growth of a spouse's separate asset, the court may consider the contribution as having a distinct value deserving of compensation." *Id.* at 494-495. Here, both exceptions apply. First, defendant demonstrated need because without such an award he would have been left without any funds or assets. Second, plaintiff's farm increased in value by $6,233 between the time of the marriage and the time of separation, plaintiff had $8,400 less in debt, and plaintiff had $16,700 in farm expenses that she did not have to pay. Therefore, because there was both a showing that plaintiff's separate estate improved as a direct result of defendant's input and that

allowing defendant to leave the marriage virtually penniless would be insufficient for his suitable support and maintenance, the trial court properly invaded plaintiff's separate estate.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Peter D. O'Connell